HONOURABLE SRI G.S. SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SRI JUSTICE G. BHAVANI PRASAD

WRIT APPEAL No.2617 OF 2005

Between:

Medical Council of India

Rep. by its Secretary

Aiwan-E-Galib Marg, Kotla Road,

Opp: Mata Sundari (Women's) College,

New Delhi.

.. Appellant

AND

M. Sunil Chowdary, S/o. Late Somaiah,

aged about 19 years, Occ: Student,

R/o. Sujathanagar, Near Indian Gas Godown,

Narasaraopet, Guntur District.

.. Respondents

::JUDGMENT::

-

Counsel for the Appellant : Mr. S. Niranjan Reddy

Counsel for Respondent No.1 : Mr. K.G.K. Prasad

Counsel for Respondents 2 & 5 : G.P. for Medical, Health & Family

Welfare
Counsel for Respondent No.3 : Mr. D.V. Nagarjuna Babu
Counsel for Respondent No.4 & 6: None appeared

–

January 04, 2006

Per G.S. Singhvi, CJ

This appeal by the Medical Council of India is directed against order dated 10-11-2005 passed by the learned Single Judge in W.P. No.17092 of 2005 whereby he accepted the claim of respondent No.1 to be treated as a ward of ex-serviceman and directed that his case be considered for admission against the seat reserved for Children of Armed Personnel.

The main ground on which the appellant has assailed the order of the learned Single Judge is that direction for consideration of the candidature of respondent No.1 for admission could not have been given after the expiry of time schedule prescribed in terms of the judgments of the Supreme Court in **Medical Council of India v. Madhu Singh** and **Mridul Dhar (Minor) & another v. Union of India.**

Sri S. Niranjan Reddy, learned counsel for the appellant, argued that in view of the mandate of the judgments of the Supreme Court in **Madhu Singh's** case and **Mridul Dhar's** case (Supra 1 and 2) and the guidelines issued by the appellant from time to time, respondent No.1 cannot be admitted to M.B.B.S. course against a seat earmarked for reserved category because the last date for admission was 30th September, 2005. Learned Counsel emphasized that on the basis of admission, if any, given in furtherance of the direction given by the learned Single Judge, respondent No.1 will not be able to complete the course and, therefore, the impugned order is liable to be set aside. Sri Reddy also invited our attention to order passed by the Supreme Court in **Medical Council of India v. Naina Verma (**^{3}**C.A. No.451 of 2004 dated 13-01-2005)** where in a similar case, the Supreme Court reversed the direction given by the Himachal Pradesh High Court on 28-11-2003 for admission of the writ petitioner

(respondent) in M.B.B.S course. Learned counsel also placed before us the instructions issued by the Medical Council of India on 27-01-2005 in the light of the judgments of the Supreme Court.

Learned counsel for respondent No.1 made strenuous efforts to persuade us not to interfere with the direction given by the learned Single Judge by pointing out that in compliance of the impugned order, his client has already been admitted against the reserved seat earmarked for the Children of Armed Personnel. He submitted that the directions given by the Supreme Court in **Madhu Singh's** case (supra 1) which were reiterated in Mridul Dhar's case (supra 2) cannot be applied to the case of respondent No.1 because he had already been admitted on 29-07-2005.

To support this contention, learned counsel invited our attention to page 61 of the paper book. Learned counsel further submitted that even if the Division Bench comes to the conclusion that the direction given by the learned Single Judge is not sustainable in view of the contrary judgments of the Supreme Court, the admission of respondent No.1 against the free seat may be protected and the authorities concerned may be directed not to charge additional fee from him, if his admission is treated as regularized for the next academic year i.e. 2006-07.

Learned counsel for the University supported the arguments of the learned counsel for the appellant and submitted that communication dated 29-07-2005 cannot be treated as an admission granted to respondent No.1 in accordance with law.

We have given serious thought to the respective arguments.

I n **Madhu Singh's Case** (Supra 1), the Supreme Court adversely commented on the practice of midstream admissions and issued mandatory directions against admission of the candidates in the medical course after the cut off date. The ratio of that judgment was approved by the Larger Bench of

the Supreme Court in **Mridul Dhar's**

Case (2 Supra). The relevant extracts of that judgment are reproduced below:

> "……..Having regard to the professional courses, it deserves to be emphasised that all concerned including Governments, State and Central both, MCI/DCI, colleges – new or old, students, Boards, universities, examining authorities, etc. are required to strictly adhere to the time schedule wherever provided for; there should not be midstream admissions; admission should not be in excess of sanctioned intake capacity or in excess of quota of any one, whether State or Management. The carrying forward of
> any unfilled seats of one academic year
> to next academic year is also not permissible……..."
>
> ……Having regard to the aforesaid,
>
> we issue the following directions :-

1. All participating States and Union Territories' Boards of Secondary Education shall declare

   10 + 2 result by 10th June of every year and make available the marksheets to the students by 15th June.

   The aforesaid condition would not apply to West Bengal for the year 2005. As already noticed, West Bengal would make available to the students concerned the marksheets by
   15-6-2005.

   Heads of Boards would be personally liable to ensure compliance.

2. The timetable mentioned in Notification dated 25-2-2004 shall be strictly adhered to by all concerned including States and Union Territories and results of State Medical/Dental Entrance Examination shall be declared before 15th of June.

3. The States/Union Territories shall complete the admission process of first round of State-level Medical/Dental College admission by 25th July i.e. a week before start of second round counseling or allotment of seats under All-

India Quota. The correct vacancy position shall be intimated by the Chief Secretary to the State/Union Territory to the DGHS by 26th July. It shall be verified by the Head of the Institution/or Head of the Medical Institution/Health Department of the State.

4. It shall be the responsibility of all concerned including Chief Secretaries of each State/Union Territory and/or Health Secretaries to ensure compliance with the directions of this Court and requisite time schedule as laid down in the Regulations and non-compliance would make them liable for requisite penal consequences.

5. All seats in All-India Quota must be fully disclosed giving details of the date of recognition/renewal to DGHS before a date to be notified by DGHS and the same shall be duly published.

6. By 31st October, the States, through the Chief Secretaries/Health Secretaries shall file a report in regard to admissions, with the DGHS giving details about the adherence to a time schedule and admission granted as per the prescribed quota. The recalcitrant States, particularly officers personally will have to face the consequences for violation.

7. The DGHS shall file by 31-1-2005 report in regard to feasibility of conducting counseling through the process of video-conferencing.

8. The DGHS shall file report within three months on the aspect of Section 10-A seats being subjected to 15 per cent All-India Quota and about the increase of the quota from 15 per cent to 20 per cent.

9. The DGHS shall also file a report within three months on the aspect of constitution of high-powered Committee/Ombudsman.

10. The seats allotted upto 15th July, shall also be subjected to the respective State Quotas.

11. If any private medical college in a given academic year for any reason grants admission in its management quota in excess of its prescribed quota, the management quota for the next academic year shall stand reduced so as to set off the effect of excess admission in the management quota in the previous academic year.

12. The time schedule for grant of admission to postgraduate courses shall also be adhered to.

13. For granting admission, the merit determined by competitive examination shall not be tinkered with by making a provision like grant of marks by mode of interview or any other mode.

14. Time schedule for establishment of new college or to increase intake in existing college, shall be adhered to strictly by all concerned.

15. Time schedule provided in the Regulations shall be strictly adhered to by all concerned failing which defaulting party would be liable to be personally proceeded with.

16. Copy of the judgement shall be sent to the Chief Secretaries of all the States/Union Territories for compliance……"

In compliance of the directions given by the Supreme Court in **Madhu Singh** and **Mridul Dhar Cases** (Surpa 1 and 2), the appellant has, from time to time, issued guidelines which are applicable to all the admissions made in

medical courses through out India.

In **Naina Verma's Case** (3 Supra), the writ petitioner had approached the Himachal Pradesh High Court on
04-07-2003 for issuance of a direction to the non-petitioners to admit her to M.B.B.S. course. By order dated 28-11-2003, the High Court allowed the writ petition and directed the authorities concerned to admit the writ petitioner to M.B.B.S. course. In compliance of the High Court's order,
the authority concerned passed order dated 09-01-2004 shifting the admission of the writ petitioner from B.D.S. to M.B.B.S. course. On appeal, the Supreme Court reversed the direction of the High Court and observed:

> "……We are of the view that this is not a matter which calls for any compromise.
> The respondent must complete the MBBS course with effect from the day one. There is no shortcutting the process of education by means of litigation or otherwise. We are supported in the view that we have taken by the decision of this Court in Muskan Dogra and Ors. vs. State of Punjab and Ors. pronounced on 14.12.2004 in SLP(C) No.21219/2004.
> In that case the writ petitioner had been admitted in the BDS Course whereas according to his ranking he should have been permitted to join MBBS Course. By the time the writ petition was disposed of and the matter came up to this Court, the writ petitioner had been studying for one and half year in the Dental Course. This court while upholding the petitioner's claim to be admitted in the MBBS course made it clear that he would have to forego one and half years spent in the Dental Course and start the MBBS Course from day one.
>
> The situations brought about by the various orders of the High Court would not have occurred, had the High Court in compliance with the directives of this Court, also ensured that the Medical Council was made a party before passing any such order relating to admissions in the Medical Courses.
>
> In the circumstances of the case,

> we dispose of the appeal by allowing the respondent No.1 to be admitted in the MBBS Course for the academic session 2005-2006 within the permissible capacity of the Rajinder Prasad College, Tanda……"

In view of the unequivocal directions given by the Supreme Court against mid-term admissions in the medical courses, the order passed by the learned single Judge for admission of respondent No. 1 against the seat reserved for Children of Armed Personnel cannot be sustained and respondent No. 1 cannot take advantage of the order passed by the concerned authority of the university for his admission. At the same time, we feel that admission of respondent No. 1 against a free seat shall not be disturbed merely because his admission against the reserved seat has been found to be unsustainable.

In the result, the appeal is allowed. The order of the learned Single Judge is set aside. Consequently, the admission granted to respondent No.1 vide communication dated 17-12-2005 against the reserved seat meant for the Children of Armed Personnel shall stand nullified. However, this shall not affect the admission of respondent No.1 against the free seat and the authority concerned is directed to adjust the fees already deposited by him in the form of tuition fee as well as hostel charges.

Needless to say that in terms of **Naina Verma's Case** (Supra 3), respondent No.1 shall be entitled to avail the benefit of admission against the reserved seats meant for the Children of Armed Personnel in the year 2006-07.

G.S. SINGHVI, C.J.

Date:04-01-2006

G. BHAVANI PRASAD, J

PV / vtv